

48A C.J.S. Judges § 61

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

III. Term and Tenure of Office; Vacancy

E. Termination of Term

1. In General

§ 61. Resignation of office

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A judge's term or tenure may be terminated by his or her resignation of office, consisting of a willful and voluntary relinquishment of office.

The term or tenure of an incumbent judge may be terminated by reason of his or her resignation.¹ A judge may resign at any time,² and he or she is not precluded from tendering his or her resignation during the pendency of removal proceedings against him or her.³ A resignation need not be expressed and may be implied from the judge's conduct,⁴ such as the acceptance of a second office incompatible with the one already held.⁵

In the absence of a statute providing otherwise,⁶ the resignation of a judge becomes effective when it is received by,⁷ filed with,⁸ or upon its acceptance by⁹ the proper authority. In some jurisdictions, in order to become effective, the resignation must, in fact, be accepted.¹⁰ The rejection of a judge's resignation, without more, does not, however, continue the judge in office since his or her continuance in office, in the absence of impeachment and conviction of such judge, is subject wholly to the will of the judge.¹¹

A judge may make his or her resignation effective at a future date.¹² A prospective resignation may generally be withdrawn at any time before it is accepted.¹³ Additionally, after such resignation is accepted, it may be withdrawn by the consent of the accepting authority,¹⁴ at least where no new rights have intervened.¹⁵ In some jurisdictions, however, a resignation of a judicial officer effective either immediately or at a future date may not be withdrawn after such resignation is received by or filed with

the officer authorized by law to fill such vacancy or to call an election for such purpose.¹⁶ In still other jurisdictions, a judicial resignation, when accepted, becomes irrevocable.¹⁷

In some jurisdictions, pursuant to constitutional provisions, the resignation of a judge does not, of itself, terminate his or her authority.¹⁸ It is, rather, in such jurisdictions, within the power and duty of such judge to continue exercising the duties of his or her office until a successor in office is duly qualified.¹⁹

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Footnotes

- 1 Mass.—*Opinion of the Justices*, 360 Mass. 907, 277 N.E.2d 293 (1971).
Effect of telegram
Ky.—*Blackburn v. City of Paducah*, 441 S.W.2d 395 (Ky. 1969).
- 2 Mass.—*Opinion of the Justices*, 360 Mass. 907, 277 N.E.2d 293 (1971).
- 3 N.C.—*In re Peoples*, 296 N.C. 109, 250 S.E.2d 890 (1978).
As to removal proceedings against a judge, see §§ 119 to 140.
- 4 Ohio—*State ex rel. Witten v. Ferguson*, 148 Ohio St. 702, 36 Ohio Op. 285, 76 N.E.2d 886 (1947).
- 5 Ohio—*State ex rel. Witten v. Ferguson*, 148 Ohio St. 702, 36 Ohio Op. 285, 76 N.E.2d 886 (1947).
As to the holding of another office by a judge as creating a judicial vacancy, see § 75.
- 6 N.Y.—*Cassedy v. Wilkins*, 137 Misc. 748, 244 N.Y.S. 445 (Sup 1930).
- 7 Ill.—*In re Dempsey*, 101 Ill. Dec. 58, 498 N.E.2d 240 (Ill. 1986).
- 8 Ill.—*Cole v. McGillicuddy*, 21 Ill. App. 3d 645, 316 N.E.2d 109 (1st Dist. 1974).
Filing with proper authority essential
Ky.—*Hancock v. Queenan*, 294 S.W.2d 92 (Ky. 1956).
- 9 La.—*McKenzie v. Edwards*, 361 So. 2d 880 (La. 1978).
- 10 Wyo.—*State v. Jefferis*, 26 Wyo. 115, 178 P. 909 (1919).
- 11 U.S.—*Clark v. U.S.*, 109 Ct. Cl. 444, 72 F. Supp. 594 (1947).
As to the impeachment of a judge, see § 142.
- 12 Fla.—*Advisory Opinion to Governor re Sheriff And Judicial Vacancies Due To Resignations*, 928 So. 2d 1218 (Fla. 2006).
- 13 U.S.—*Clark v. U.S.*, 109 Ct. Cl. 444, 72 F. Supp. 594 (1947).
Recognition of right of withdrawal
La.—*Coco v. Jones*, 154 La. 124, 97 So. 337 (1923).
- 14 U.S.—*Clark v. U.S.*, 109 Ct. Cl. 444, 72 F. Supp. 594 (1947).
- 15 Ind.—*Biddle v. Willard*, 10 Ind. 62, 1857 WL 5759 (1857).

Withdrawal permissible prior to filling of vacancy

U.S.—[Clark v. U.S.](#), 109 Ct. Cl. 444, 72 F. Supp. 594 (1947).

16 Ill.—[People ex rel. Adamowski v. Kerner](#), 19 Ill. 2d 506, 167 N.E.2d 555, 82 A.L.R.2d 740 (1960).

17 La.—[McKenzie v. Edwards](#), 361 So. 2d 880 (La. 1978).

18 Tex.—[El Paso & S.W.R. Co. of Tex. v. Ankenbauer](#), 175 S.W. 1090 (Tex. Civ. App. El Paso 1915), writ refused, (Mar. 29, 1916).

19 Tex.—[El Paso & S.W.R. Co. of Tex. v. Ankenbauer](#), 175 S.W. 1090 (Tex. Civ. App. El Paso 1915), writ refused, (Mar. 29, 1916).

As to the propriety and right of a judge to hold over after the effective date of the termination of his or her term, see § 60.

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